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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-858

DONALD H. MATHES and
PATRICIA MARIE MATHES,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FIFTH JUDICIAL CIRCUIT

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COMMISSIONER OF INTERNAL REVENUE,
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FIFTH JUDICIAL CIRCUIT

The Petitioners, Donald H. Mathes and Patricia Marie Mathes, respectfully request that a writ of certiorari issue to review the Judgment of the Court of Appeals for the Fifth Circuit entered July 10, 1978 which affirmed the decision of the Tax Court of the United States.

OPINION BELOW

The Fifth Circuit Court of Appeals, by its judgment affirmed the decision of the Tax Court of the United States, a copy of said judgment being attached hereto at Appendix "B".

JURISDICTION

The Judgment of the Fifth Circuit affirming the decision of the Tax Court of the United States was dated July 10, 1978. On the 27th day of October, 1978, the United States Supreme Court issued the (Appendix A) Extending Time to File Petition For Writ of Certiorari to and including November 30, 1978. This Court's jurisdiction is invoked under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

1. Does the Internal Revenue Service as well as the Judges of the Tax Court of the United States have the authority to change the definition of a lawful, statutory, standard United States Dollar from the definition of which has been provided by the United States Congress within the confines of the intention of the United States Constitution?

2. May the right to trial by jury be denied by the Tax Court of the United States when it is requested pursuant to the Seventh Amendment to the United States Constitution?

3. Whether the Fifth Circuit Court of Appeals must address all issues raised on appeal by Petitioners-Appellants therein?

CONSTITUTIONAL PROVISIONS INVOLVED

The pertinent provisions of Article I, III, V, VI, Amendments V, VI, VII of the Constitution of the United States are set forth in Appendices "C" through "J" respectively.

STATEMENT OF FACTS

Petitioners sought in the original proceedings a refund of taxes withheld from their wages in 1973 and 1974 which are in excess of the taxpayers' income tax liability for said years as claimed on their (Appendix "K") amended 1973 return and an original 1974 return. The returns in litigation reported all income and other amounts in lawful, statutory, standard dollars (S$'s) and utilized the fair market values of notes (P$'s) and other non-dollar income items. After reviewing a few of the cases that the Internal Revenue Service utilized to support its position, it became apparent that taxpayers should seek the protection of a trial by jury pursuant to the Seventh Amendment to the United States Constitution.

At the trial on May 9, 1977, Petitioners demanded a trial by jury as mentioned above and said motion was denied by the Judge and the matter proceeded. On July 14th and 15th, 1977, the Judge rendered a decision entering judgment against Petitioners' reporting technique.

REASONS FOR GRANTING THE WRIT

I

The Internal Revenue Service as well as the Judges of Tax Court of the United States Do Not have the Authority to Change the Definition of a Lawful, Statutory, Standard United States Dollar from the Definition Which Has Been Provided by the United States Congress Within the Confines of the Intention of the United States Constitution.

Congress alone has the authority to define a United States dollar. The Federal Reserve Notes for the disputed periods do not comply with the Congressional definition.

Article VI of the United States Constitution states: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . , shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, . . ." The subsequent paragraph therein states, ". . ., and all executive and judicial Officers both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; . . . ."

Article I, Section 8, Clause 5 regarding the powers of Congress states that Congress shall have the power "To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures".

And thus the supreme law of the land declares that only Congress has the authority to define a standard United States dollar. No where in the Constitution is the Congress granted the power to delegate the authority to coin money or to define a dollar to any governmental department, agency or corporation.

For almost 200 years, Congress has written laws which define the standard United States dollar in essentially the same manner. For almost 200 years, the dollar has been either a specific weight of gold in a coin or a specific weight of silver in a coin. The first such law was the Coinage Act of 1792 which states in Section 9: "That there shall be coins of gold, silver, and copper, of the following denominations, values and descriptions, viz. EAGLES—each to be of the value of ten dollars or units, and to contain two hundred and forty-seven grains and four eights of a grain (247.5 grains) of pure, or two hundred and seventy (270 gr.) grains of standard gold (91.67% pure gold) . . . DOLLARS or UNITS—each

to be of the value of a Spanish milled dollar as the same is now current, and to contain three hundred and seventy-one grains and four sixteenth parts of a grain (371.25 gr.) of pure, or four hundred and sixteen (416 gr.) grains of standard silver (89.24% pure silver)." Thus the "dollar" was defined two ways in 1792:

a. As the tenth part of a coin containing 247.5 grains of pure gold (24.75 gr. per $).

b. As a coin containing 371.25 grains of pure silver.

And as was stated in Section 11, ". . . the proportional value of gold to silver in all coins which shall be law be current as money within the United States, shall be as fifteen to one, according to the quantity in weight, of pure gold or pure silver—." And finally in Section 20, we find "that the money of account of the United States shall be expressed in dollars or units, . . . and that all accounts in the public offices and all proceedings in the courts of the United States shall be kept and had in conformity to this regulation." Thus the money of account of the United States was and still is by law a dollar of a specific weight of gold or a specific weight of silver.

The Gold Standard Act of 1900 continued this tradition when it stated: "That the dollar consisting of twenty-five and eight-tenths (25.8 gr.) grains of gold nine tenths (90%) fine (23.22 grains of pure gold), . . . shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard."

The Federal Reserve Act of 1913 complied with the tradition. Section 16 states that: "Federal reserve notes

. . . shall be redeemed in gold on demand at the Treasury Department . . . or in gold or lawful money at any Federal Reserve Bank." And Section 26 of the Federal Reserve Act states: "Nothing in this Act contained shall be construed to repeal the parity provision or provisions contained in an Act approved March fourteenth, nineteen hundred, entitled 'An Act to define and fix the standard of value, to maintain the parity of all forms of money issued or coined by the United States . . .' and the Secretary of the Treasury may for the purpose of maintaining such parity and to strengthen the gold reserve, borrow gold on the security of United States bonds . . .". Thus it is clear that the Congress had no intention to establish the Federal Reserve Note as a United States dollar in and of itself alone. The Federal Reserve Note had value and was equivalent to a United States dollar only because it was redeemable on demand, at par with either a gold dollar or a silver dollar (lawful money).

The Gold Reserve Act of 1934 continued the tradition with the exception that Federal Reserve Notes had to be redeemed in gold bullion instead of gold coin. Section 6 of the Act of 1934 states: "That gold certificates . . . shall be redeemed . . . to maintain the equal purchasing power of every kind of currency of the United States: . . . and the reserve for Federal Reserve notes shall be maintained in gold certificates, ... No redemptions in gold shall be made except in gold bullion bearing the stamp of a United States mint . . . in an amount equivalent at the time of redemption to the currency surrendered for such purpose." Federal Reserve notes were also still directly redeemable on demand, at par with lawful (silver dollar coin) money.

The Act of 1934 placed restrictions on the circulation of gold coins but the gold dollar remained as a standard of value. Section 9 of the Act of 1934 states that: "The Secretary of the Treasury . . . may sell gold in any amounts, at home or abroad, . . . which is required to be maintained as a reserve or a security for currency issued by the United States . . . to maintain such currency at a parity with the gold dollar." Section 12 states: ". . . the weight of the gold dollar shall be fixed. . . ." Section 15 states: ". . . one dollar face amount of any currency (includes Federal Reserve Notes) of the United States equals such a number of grains of gold, nine-tenths fine, as . . . are contained in the standard unit of value . . . the weight of the gold dollar . . .". The weight of the gold dollar was reduced in 1934 but the dollar continued to be defined as either a specific weight of gold or a specific weight of silver.

The weight of the gold dollar was again reduced on March 31, 1972, by Public Law 92-268, "The Par Value Modification Act" which states: "The Secretary of the Treasury is hereby authorized and directed to take the steps necessary to establish a new par value of the dollar of 1$ equal one thirty-eighth of a fine troy ounce of gold. When established, such par value shall be the legal standard for defining the relationship of the dollar to gold. . . . The Secretary of the Treasury is authorized and directed to maintain the value in terms of gold of United States dollars."

It is particularly interesting to these taxpayers that the symbol ($) is equated precisely to a specific weight of gold (1/38th troy ounce) in the above statutory law. Title 26 USC Section 6012 uses the same symbol to define

the kind of dollars that are to be reported on a tax return. Pursuant to the preceding, taxpayers can report their income amounts in terms of statutory dollars with full assurance that the law supports our choice.

On October 18, 1973, the par value of the statutory, lawful, standard United States dollar was again reduced to 0.023684 troy ounces of pure gold. Thus the official price of gold was raised from 38.00 to 42.22 statutory dollars per troy ounce of gold.

The Court will note that the taxpayers followed this 1973 change in par value of the statutory dollar faithfully which is more evidence that the taxpayers have reported the value of their note income in terms of statutory dollars and not the "value in gold and silver" as claimed by the Tax Court. The exchange rate between gold or silver and pseudo dollars is merely the mechanism for establishing the value in statutory dollars of certain notes.

And as has already been shown by the laws above, Congress has never replaced the statutory dollar with "paper money." Throughout the monetary history of the United States, "paper" is "money" only when that paper is redeemable on demand, at par with real, lawful statutory dollars. Congress has never defined any "paper instrument" as a statutory lawful dollar, and consequently, the Tax Court of the United States has never been able to cite statutory law that defines a "paper" Federal Reserve Note as a statutory dollar.

At this juncture in Petitioners' application, we respectfully call to the Court's attention and request that it take judicial notice of the power of the Supreme Court in accordance with the clear intention of the framers' of our Constitution. "In the first place, the force of *a*

judicial opinion of the supreme court, in so far as it is irreversible, *reaches only the particular case in dispute;* and to this society submits, in order to escape from anarchy in the daily routine of business. To the decision on an underlying question of constitutional law no such finality attaches. To endure, it must be right. If it is right, it will approve itself to the universal sense of the impartial. A judge who can justly lay claim to integrity will never lay claim to infallibility; but with indefatigable research will add, retract, and correct whenever more mature consideration shows the need of it. *The court is itself inferior and subordinate to the constitution;* it has only a delegated authority, and *every opinion contrary to the tenor of its commission is void,* except as settling the case on trial. The prior act of the superior must be preferred to the subsequent act of an inferior; *otherwise it might transform the limited into an unlimited constitution.* When laws clash, the latest law is rightly held to express the corrected will of the legislature; but *the constitution is the fundamental code, the law of laws;* and *where there is a conflict between the constitution and a decision of the court, the original permanent act of the superior outweighs the later act of the inferior,* and retains its own supreme energy unaltered and unalterable except in the manner prescribed by the constitution itself. To say that a court, having discovered an error, should yet cling to it because it has once been delivered as its opinion, is to invest caprice with inviolability and make a wrong judgment of a servant outweigh the constitution to which he has sworn obedience. *An act of the legislature at variance with the constitution is pronounced void; an opinion of the supreme court at variance with the constitution is equally so.*

Next to the court itself, the men who framed the constitution relied upon the power and the readiness of congress to punish through impeachment the substitution of the personal will of the judge for the law." (Bancroft, II *History of the Formation of the Constitution of the United States of America,* 201-203, Second Edition, 1882, citing *Wilson's Works,* i. 29. (Emphasis added)

Let us examine the framer's concepts of money. "The thirteen American states had a larger experience of the baleful consequences of paper money than all the world besides. As each of them had a legislation of its own, the laws were as variant as they were inconvenient and unjust. The shilling had differing rates from its sterling value to an eighth of a dollar. The confusion in computing the worth of the currency of one state in that of another was hopelessly increased by the laws, which discriminated between different kinds of paper issued by the same state; so that a volume could hardly hold the tables of the reciprocal rates of exchange. Moreover, any man loaning money or making a contract, in his own state or in another, was liable at any time to loss by some fitful act of separate legislation. The necessity of providing more effectually for the security of private rights and the steady dispensation of justice, more, perhaps, than anything else, brought about the new constitution. Gilpin, 804; Elliot, 162." (Bancroft, I *History of the Formation of the Constitution of the United States of America,* 229-230, Second Edition, 1882). Throughout the colonies the hatred of paper money was so widespread that when "in 1785 rumors went abroad that the assembly was resolved to issue a paper currency, George Mason, then in private life, scoffed at solemnly pledging the public credit which had so often been disregarded, and declared that, though they might pass a law to issue paper twenty laws would not make the people receive it. George Mason to Washington, 9 Nov., 1785. MS. (Bancroft, I *History of the Formation of the Constitution of the United States of America,* 238, Second Edition, 1882). Mason, however, thought that an absolute ban on paper money may not be prudent although he mortally opposed the concept of paper money. But there can be no doubt that he was a most decided enemy to the government having any "constructive or implied" powers." (Rutland, III *The Papers of George Mason,* viii and 959 (1970).

The precursors of Article I, Section 8, Clause 5 had interesting provisions:

"10. To (regulate) [The exclusive right of] coining [money (Paper prohibit) no State to be perd. in future to emit Paper Bills of Credit witht. the app: of the Natl. Legisle. nor to make any (Article) Thing but Specie a Tender in paymt. of debts]" and

"10. To (regulate) [The exclusive right of] coining [money (Paper prohibit) no State to be perd. in future to emit Paper Bills of Credit witht. the app: of the Natl. Legisle. nor to make any (Article) Thing but Specie a Tender in paymt of debts]" Meigs, *Growth of the Constitution,* 1899 (reproduced by facsimile papers of George Mason, currently among The George Mason Papers in the Library of Congress.

In Volume V, *Debates on the Adoption of the Federal Constitution,* page 435, by Jonathan Elliott (August, 1787), Mr. Madison felt that the present wording of that clause "would only cut off the pretext for a paper

currency and particularly for making the bills a tender, either for public or private debts." (Also, Article I, Section 10 US Constitution).

"The mind of the country bent itself with all its energy to root out the evils of paper money and establish among the states one common rule by which the obligation of contracts might be preserved unimpaired. No remedy would avail that did not reach them all. They found that for the security of money there were but two remedies: frugality to diminish the need of it, and increased industry to produce more of it. They found that paper money drives specie away; that every new issue hastens its disappearance, destroying credit and creating a famine of money; that every penalty for the refusal to accept paper money at par lowers its worth, and that the heavier the penalty the more sure the decline. They saw the death-blow that is given to credit when confidence, which must be voluntary, is commanded by force. They saw that the use of paper money robs industry, frugality, and honesty of their natural rights in behalf of spendthrifts and adventurers. (Compare the writings and opinions of William Paterson, R.R. Livingston, R.H. Lee, Madison and others, written or uttered in the years immediately preceding 1787). Grayson held that paper money with a tender annexed to it was in conflict with that degree of security to property which was fundamental in every state in the union. (Grayson to Madison, 22 March, 1784. MS.) He further thought that 'Congress should have the power of preventing states from cheating one another, as well as their own citizens, by means of paper money.' (Grayson to Madison, 28 May, 1786, MS.) I *History of the Formation of the Constitution of the*

United States 240, Second Edition, 1882; also, *Sturges v. Crowninshield,* 4 Wheat, 204(1820).

Mr. Luther Martin, by letter, at the Convention stated, "a majority of the Convention, being wise beyond every event and being willing to risk any political evil rather than admit the idea of a *paper emission* in any possible case, refused to trust this authority to a government to which they were lavishing the most unlimited powers of taxation and to the mercy of which they were willing blindly to trust the liberty and property of the citizens of every state in the Union, and they erased that clause from the system." *Debates, ibid.*

The statement of Madison that (above) the "pretext for a paper currency, and particularly for making the bills a tender, either for public or private debts, was cut off" is *"the interpretation of the clause, made at the time of its adoption alike by its authors and by its opponents, accepted by all the statesmen of that age, not open to dispute because too clear for argument, and never disputed so long as any one man who took part in framing the constitution remained alive."* II *History of the Formation of the Constitution of the United States* 134-135, Second Edition (1882). (emphasis added).

The intention of the framers of the Constitution is clear and not open to dispute, and this particular Article (Article I, Section 8, Clause 5) can not be altered or amended unless the procedure in Article V for amending is followed, which it has not.

The 1851 set of *The Works of Daniel Webster,* Volume IV, page 270-271 admitted to our thesis, "What species

or forms of currency does the Constitution allow, and what does it forbid? It is plain enough that this depends on what we understand by currency. Currency, in a large, and perhaps in a just sense, includes not only gold and silver and bank-notes, but bills of exchange also. It may include all that adjusts exchanges and settles balances in the operations of trade and business. But if we understand by currency the legal money of the country, and that which constitutes a lawful tender for debts, and is the statute measure of value, then undoubtedly, nothing is included but gold and silver. Most unquestionably there is no legal tender, and there can be no legal tender, in this country, under the authority of this government or any other, but gold and silver, either the coinage of our own mints, or foreign coins, at rates regulated by Congress. This is a constitutional principle, perfectly plain, and of the very highest importance. The States are expressly prohibited from making any thing but gold and silver a tender in payment of debts; and although no such express prohibition is applied to Congress, yet, as Congress has no power granted to it, in this respect, but to coin money and to regulate the value of foreign coins, it clearly has no power to substitute paper, or any thing else, for coin, as a tender in payment of debts and in discharge of contracts."

And as we mentioned at page 12, herein, the framers were enemies of "constructive or implied" powers of the government.

Webster explained that the Constitution permitted the circulation of notes convertible into gold and silver at the will of the holder, because "The Constitutional tender

is the thing to be preserved, and it ought to be preserved sacredly, under all circumstances." *Webster, ibid,* p. 271.

United States notes are engagements to pay dollars; and the dollars intended are coined dollars of the United States. *Bank v. Supervisors,* 7 Wall. 26 (1868). The laws established by the United States under the Constitution never have declared anything else to be lawful money but gold or silver coin. Gold or silver coin and lawful money of the United States are synonymous. *Bronson v. Rodes,* 7 Wall. 229 (1868). Paper currency can circulate as lawful money only when it is redeemable at par value on demand for gold or silver coin. *Ward and Ward v. Smith,* 7 Wall. 447 (1826).

A fully secured demand promissory note, regardless of whether or not it would qualify as income to the recipient, still constitutes only the promise to pay of the maker, and does not in itself constitute an outlay of cash or other property for the purposes of the Internal Revenue Service. *Williams v. Commissioner of Internal Revenue,* 429 U.S. 569 (1977).

The Constitutional intent regarding this matter is not even remotely open to question. Petitioners respectfully request that this Court find that they can not be held liable for a higher tax payment than is due when income is reported in terms of specie, because the Internal Revenue Service, as well as the judges of the Tax Court of the United States do not have the authority to change the definition of a lawful, statutory, standard United States Dollar (specie) from the definition which has been provided by the United States Congress within the confines of the intention of the United States Constitution.

II

The Right to Trial by Jury Can Not be Denied in the Tax Court of the United States Pursuant to the Seventh Amendment to the United States Constitution.

Petitioners have a constitutional right to a trial by jury in this controversy as is guaranteed to them by the Seventh Amendment to the United States Constitution.

One of the motives for the Declaration of Independence of the American Colonies was that the corrupt, tyrannical government of England was "depriving us in many cases of the benefits of Trial by Jury". In the Republic of Texas, the Declaration of Independence stated that the Mexican government "has failed and refused to secure on a firm basis, the right of trial by jury, that palladium of civil liberty, and only safe guarantee for the life, liberty, and property of the citizen." So, the unqualified right to trial by jury in the United States has always been the hallmark of liberty.

In the United States Constitution, the right to trial by jury is given such importance that it is mentioned in three places:

1) Article III, Section 2. "The trial of all crimes, . . ., shall be by Jury;"
2) Amendment VI. "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . . ."
3) Amendment VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."

The Seventh Amendment was included to insure that the guarantee also applied to a civil controversy such as this case.

The Tax Court of the United States stated below citing *Cupp v. Commissioner*, 65 TC 68 (1975) that "it is well settled that in a suit concerning federal tax liability, no right to a jury trial exists under the Seventh Amendment to the United States Constitution guaranteeing a trial by jury in common law actions. The Fifth Circuit affirmed that theory. The continuation of that theory is that "if a taxpayer desires a jury trial, he must pay the tax and sue for refund thereof," and "that where a taxpayer takes advantage of the procedure of filing a petition in the Tax Court of the United States without payment of the tax, any deprivation of a jury trial is due to his own act." This was also affirmed by the Fifth Circuit.

It is unconstitutional for Petitioners to be forced to surrender their Seventh Amendment rights, in order to preserve their Fifth Amendment rights. *Speiser v. Randall*, 357 U.S. 513 (1958); *U.S. v. Chicago, M, St. P. & P.R. Co.*, 282 U.S. 328-329 (1931); *Frost Trucking Co. v. Railroad Commission*, 271 U.S. 583, 594 (1926).

The Fifth Circuit erroneously held that "since there was no right of action *in common law* against a soverign, enforceable by jury trial or otherwise, there is no constitutional right to a jury trial in a suit against the United States."

Trial by jury was unknown through the twelfth century (1100's) but it nevertheless developed, first in civil cases, providing a model that was copied later in criminal cases (Radin, *Handbook of Anglo-American Legal History*,

209-211, St. Paul, 1936) (McKenchie, *Magna Carta, A Commentary on the Great Charter of King John,* 359-367, Glasgow, 1914, Second Edition).

The Fifth Circuit's holding is clearly erroneous and must be corrected (see page 10 herein). The struggles with the mother country caused a wide spread of legal knowledge, and the common law came to be revered as a muniment of personal liberties. Blackstone was outdone by American lawyers in extravagant panegyrics. It is only when the rationalizing tendencies of French democracy became triumphant in America that the value of the common law was openly and bitterly attacked. Story clearly stated in *Van Ness v. Pacard* 2 Peters 144, "the common law of England is not to be taken in all respects to be that of America. Our ancestors brought with them its general principles, and claimed it as their birth-right; but they brought with them and adopted only that portion which was applicable to their condition." This theory is universally adopted by our courts, and it has given them the important power of judging of the applicability of the principles of the common law to American conditions.

Hence, the more simple, popular, general parts of the English common law were from the first of great influence on colonial legal relations. *This is, however, very far from declaring the common law of England a subsidiary system in actual force from the beginning of colonization.* On the contrary, we find from the very first, originality in legal conceptions, departing widely from the most settled theories of the common law, and even a total denial of the subsidiary character of English jurisprudence. (I *Select Essays in Anglo-American Legal History,* 369,

Boston, 1907), hereinafter referred to as *Select Essays.* The earliest settlers not only innovated upon, and departed from the common law, but in matters not fixed by their colonial laws, there was in the earliest times no reference to the common law, but were left strictly to the discretion of the magistrates (*Select Essays, ibid,* 369). The only adhesion of the colonists to the common law was of a rude, popular summary kind, in which the refined distinctions, the artificial developments of the common law had no place. (*Select Essays, ibid,* 369). What did develop was a system of popular law (Volksrecht), where the law of God took the place of a secondary system.

The laws of Massachusetts (1636) were to be "agreeable to the word of God." Where there is no law, then that written must be "as near the law of God" as it can be written. There is here absolutely no reference to the common law of England. The word of God was the subsidiary law. Their juristic system was unrefined by juristic reasonings, untrammeled by technical precedents, satisfying, in general, the sense of right in the community. Their criminal law was founded on the code of Moses. Their law of inheritance was taken from the Scriptures. They felt that their system of law should not be called "law" because God alone has the power to make law. Everywhere, *the divine law, interpreted by the best discretion of the magistrates, was looked upon as the binding subsidiary law; while the common law was, at most, referred to for the sake of illustration* (*Select Essays, ibid,* 375). The distinctions between the English names of actions was disregarded. The variance between common law and admiralty procedure was ignored. Coke's opinion

in *Bonham's Case,* 8 Rep., 118a, shows that the New England colonists did not consider the common law as binding *per se,* but in as far as expressive of the law of God to be used for purposes of illustration and guidance. The institution of trial by jury was by no means unquestionably accepted, and for a substantial period of time was in a very insecure position and for a period of time was abolished, but reinstalled in 1652. The colonists held that "the laws of England are binding only on those who live in the English country, for neither do the laws of Parliment nor the King's writ go any further." "The laws of the colony are not diametrically opposed to the laws of England, for then they must be contrary to the laws of God, on which the common law, so far as it is law, is also founded." The common law, so far as it is law must embody divine justice, for the Scriptures are the original source. (Winthrop, *History of New England,* II, star p. 284) (*Select Essays, ibid,* 381).

In jury trials, matters of law and fact were not distinguished (*Plaine Dealing,* Trumbull's edition, p. 26) (*Select Essays, ibid* 382). The laws of England were neither "in the whole nor in any part of them valid or pleadable in the colonial courts until received by the General Assembly." They were described as "bounded within four seas and not reaching to America." (*Select Essays, ibid* 383) (Edward Randolph, *Prince Society Publications,* II, 311) (*Massachusetts Colonial Records,* V, 198, 200, 321).

When we find expressions of admiration for or adherence to the common law, such as are very common in the beginning of the Revolutionary War, they refer

rather to the general principles of personal liberty, than to the vast body of rules regulating the rights of contract, property and the proceedings in court. (*Documents Relative to Colonial History of New York,* III, 539) (*Select Essays, ibid,* 384). John Adams wrote in the *Novanglus,* Works, IV, 122: "How then do we New Englanders derive our laws. I say not from parliament, not from the common law, but from the law of nature and the compact made with the King in our charter. Our ancestors were entitled to the common law of England when they emigrated; that is to say, to as much of it as they pleased to adopt and no more. They were not bound or obliged to submit to it unless they chose." In Massachusetts, during the 17th century we find a continued, conscious, and determined departure from the lines of the common law. We have a layman law, a popular equitable system, which lacks the elements of rigor, of clear cut principles, of unswerving application, but which forms a basis on which a simple community could well adjust its legal relations (*Select Essays, ibid* 386).

In Connecticut, there was an absence of radical modification of the jury trial and the clear and unequivocal assertion of the binding force of divine law as a common law in all temporal matters, as a guiding rule in civil and criminal jurisdictions (*Select Essays, ibid* 387).

In New Hampshire and Vermont the binding force of any code, imposition, or law, or ordinance not made by the General Assembly and approved by the president and council was refused. They did claim the liberties belonging to free Englishmen. The settlers were so impatient of control that all questions of law and fact

were decided by juries (Poore, *Constitutions, Charters and Documents,* p. 1276) (Belknap's, *New Hampshire,* p. 454; *New Hampshire Documents and Records,* I, 382) (*Select Essays, ibid* 387). Hence, there was no administration of the rules of the common law (*Select Essays, ibid* 388).

In Rhode Island, the code was thoroughly original and in parts archaic. The jury trial system was modified. "Their proceedings are very unmethodical, no wise agreeable to the course and practice of the courts of England, and many times very arbitrary and contrary to the laws of the place" (*Documents Relative to Colonial History of New York,* IV, 600) (*Select Essays, ibid* 389).

In New York, after the occupation by the English, the jury came into use. Jury trials were, however, very informal. (Fernow, *Records of New Amsterdam,* V, 267ff) (*Select Essays, ibid* 393) The attitude of Rhode Island towards lawyers was shown by the fact that by an act of the general assembly in 1729, they were forbidden to be deputies, their presence being found to be of ill consequence (Arnolds, *History of Rhode Island,* II, 98) (*Select Essays, ibid* 390). The same occurred in New York (Gov. Colden to Hillsboro; *Documents Relative to Colonial History of New York,* VIII, 61) (*Select Essays, ibid* 394).

In New Jersey the power of the jury was exaggerated greatly from the common law. (*Grants and Concessions,* p. 96) (*Select Essays, ibid* 395).

Likewise the law of Pennsylvania was very original and contained the essence of the developments that

curiously characterize American jurisprudence. (*Pennsylvania Colonial Records,* I, 291) (*Select Essays, ibid* 400)

In Maryland, the English common law was so disregarded, that trial by jury in that colony was in many respects unusual. Also, the opposition to lawyers was similar to that of the other colonies. (*Select Essays, ibid* 401-402)

In the Southern colonies, Virginia and the Carolinas all English statutes declaring the rights and liberties of subjects, as well as the common law was acknowledged, except where it may be found inconsistent with the customs and laws of the province (*Select Essays, ibid* 403-408)

Among the early colonists we therefore find a very clear perception of their destiny to work out a new legal system to establish rules dictated by their special policy or by the conditions of primitive and simple life in which they found themselves. Respect was often expressed for the common law, but it was generally modified or disregarded. While the general legal conceptions were conditioned by and their terminology derived from, the common law, the early colonists were far from applying it as a technical system, they often ignored it or denied its subsidiary force, and they consciously departed from many of its most essential principles. (*Select Essays, ibid* 410-415).

Alexander Hamilton wrote in *The Federalist,* Dent: NY (1961, p. 424) that the delegates to the Constitutional Convention were upset about the absence of a constitutional provision for trial by jury in all civil cases. He said that since it was provided for in criminal matters,

it could not be denied in civil matters; Williamson pointed out the necessity of providing for juries in civil cases (*Gilpin,* 1563; *Elliot,* 537).

Madison in *The Debates and Proceedings in the Congress of the United States,* by Gales (1834) stated:

> "I acknowledge the ingenuity of those arguments which were drawn against the constitution, by a comparison with the policy of Great Britain, in establishing a declaration of rights; but there is too great a difference in the case to warrant the comparison: therefore, the arguments drawn from that source were in a great measure inapplicable. In the declaration of rights which that country has established the truth is, they have gone no farther than to raise a barrier against the power of the Crown; the power of the legislature is left altogether indefinite. Altogether I know whenever the great rights, the trial by jury, freedom of the press, or liberty of conscience, come in question in that body, the invasion of them is resisted by able advocates, yet their Magna Carta does not contain any one provision for the security of those rights, respecting which the people of America are most alarmed. The freedom of the press and rights of conscience, those choicest privileges of the people, are unguarded in the British constitution."

Hence, the right to trial by jury in the United States is, in fact, unqualified, and the holding to the contrary by the courts below is erroneous, and therefore it is respectfully requested that the United States Supreme Court in this matter reaffirm that right the intention of which is clearly found from the words of the framers of the Constitution of the United States.

III

The Fifth Circuit Court of Appeals Must Address All Issues Raised on Appeal by Petitioners-Appellants Therein.

The Fifth Circuit Court of Appeals has ignored the pronouncements that an appeal imposes on the appellate court the duty of determining all questions properly raised by petitioner. *Leahy v. U.S.,* 272 F.2d 487 (9th C.A. —1959); Amendments V and VII, United States Constitution.

Our first issue herein, was ostensibly ignored by the Fifth Circuit, and it proceeded to rule on a totally distinct question presented by the Respondents herein at that instance. Its haste to dispose of this matter which in esse denies due process to Petitioners by use of the Summary Calendar is merely evidence of a prematurely performed judgment in a matter of the most pressing Constitutional importance.

Petitioner is entitled to have all of his issues decided as a matter of due process since they were the moving parties. Hence, the most important of Petitioners' issues were not even considered in the Fifth Circuit Court of Appeals.

Petitioners respectfully request that the Court consider each of Petitioners points on appeal as explained herein and in the record.

CONCLUSION

For the foregoing reasons, petitioners respectfully submits that the Writ of Certiorari should be granted as sought.

Respectfully submitted,

DONALD H. MATHES
and
PATRICIA MARIE MATHES
Petitioners Pro Se
3610 Nottingham Street
Houston, Texas 77005

DR. WILLIAM R. PABST
Research Consultant
Suite 201
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Houston, Texas 77006
(713) 521-9896

Dated: November 29, 1978

Service of the within and receipt of a copy thereof is hereby admitted this ____ day of November, A.D., 1978.

_____

_____

APPENDIX "A"

IN THE
SUPREME COURT OF THE UNITED STATES

NO. A-384

DONALD H. MATHES, ET UX.,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE
ORDER EXTENDING TIME TO FILE PETITION
FOR WRIT OF CERTIORARI

Upon Consideration of the application of petitioner(s),

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including November 30, 1978.

/s/ Lewis F. Powell, Jr.
Associate Justice of the Supreme
Court of the United States

Dated this 27th day of October, 1978.

APPENDIX "B"

IN THE
UNITED STATES COURT OF APPEALS
For The Fifth Circuit

October Term, 1978

Summary Calendar

T.C. No. 4674-76

DONALD H. MATHES, and
PATRICIA MARIE MATHES,
Petitioners-Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

Appeal from the Decision of the
Tax Court of the United States

Before RONEY, GEE and FAY, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record of the Tax Court of the United States, and was taken under submission by the Court upon the record and brief on file, pursuant to Rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the decision of the said Tax Court in this cause be, and the same is hereby, affirmed;

It is further ordered that petitioners-appellants pay to respondent-appellee, the costs on appeal to be taxed by the Clerk of this Court.

July 10, 1978

Issued As Mandate: Aug. 1, 1978

APPENDIX "C"

Article I, Section 8, Clause 5 of the United States Constitution:

> "To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;"

APPENDIX "D"

Article I, Section 10, Clause 1 of the United States Constitution:

> "No State shall . . . emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any . . . Law impairing the Obligation of Contracts, ..."

APPENDIX "E"

Article III, Section 2, Clause 3 of the United States Constitution:

> "The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury;"

APPENDIX "F"

Article V, of the United States Constitution:

> "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments,".

APPENDIX "G"

Article VI, Clause 2 of the United States Constitution:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, ..."

Clause 3, thereof:

> ". . . , and all executive and judicial Officers, both of the United States and of the several States shall be bound by Oath or Affirmation, to support this Constitution; . . . ."

APPENDIX "H"

Amendment V to the United States Constitution:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

APPENDIX "I"

Amendment VI to the United States Constitution:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . . ."

APPENDIX "J"

Amendment VII to the United States Constitution:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, ..."

APPENDIX "K"

Attachments to Amended 1973 and to Original 1974 Income Tax Return of Petitioners

ATTACHMENT "A" to Amended 1973 and to Original 1974 Income Tax Returns of Donald H. Mathes and Patricia Marie Mathes. SS No. 465-40-2178.

Explanation of Standard or Statutory Dollars (S$) and Paper or Pseudo Dollars (P$).

We find that it is more correct to report our income and other amounts in statutory or standard dollars on our income tax returns. The explanation is as follows:

1. "The Gold Standard Act" of March 14, 1900 specifies:

   "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the dollar consisting of twenty-five and eight-tenths grains of gold nine-tenths fine, as established by section thirty-five hundred and eleven of the Revised Statutes of the United States shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the Secretary of the Treasury to maintain such parity."

2. This set the price of pure gold at the following:

   Standard dollar = 25.8 grains of 90% gold.

   1 troy ounce = 480 grains.

$$\frac{\text{480 gr./oz.}}{\text{.90} \times \text{25.8 gr. gold / S\$}} = \text{S\$ 20.67 / oz.}$$

3. In 1934, by a Presidential Proclamation duly authorized by law and subsequently determined to be constitutional by the U. S. Supreme Court, the weight of the dollar was changed to "—15 5/21 grains of gold nine-tenths fine—." No other provision of the "Gold Standard Act" cited above was changed.

4. The price of gold was revised to the following in 1934:

   Standard dollar = 15.238 grains of 90% gold.

   $$\frac{480 \text{ gr./oz.}}{.90 \times 15.238 \text{ gr./S\$}} = \text{S\$ } 35.00 \text{ / oz.}$$

5. On March 31, 1972, legislation (S3160) enacted by Congress was signed by the President. This further reduced the weight of the dollar to "one thirty-eighth of a fine troy ounce of gold" but did not otherwise modify the "Gold Standard Act of 1900". Thus, the price of gold was revised to S$ 38.00 / oz. in 1972.

6. On October 18, 1973, Congress again reduced the weight of the dollar to "0.023684 of a fine troy ounce of gold." This also did not otherwise modify the "Gold Standard Act of 1900."

7. Thus after October 18, 1973, and at the present time, the price of gold is as follows:

   $$\frac{1}{0.023684 \text{ oz./S\$}} = \text{S\$ } 42.22 \text{ / troy oz.}$$

8. The foregoing makes clear that the statutory dollar is the legal dollar in these United States and should be used in calculating our income tax returns.

9. Thus we have reported our incomes and other amounts on the following basis:

   1973 Return

   S$ 38.00 / oz. of gold 1- 1-'73 to 10-18-'73.
   S$ 42.22 / oz. of gold 10-18-'73 to 12-31-'73.

   1974 Return

   S$ 42.22 / oz. of gold for the entire year.

10. For convenience in this discussion and on our returns, we have used the symbol "S$" for statutory or standard dollars.

11. In past years, the U. S. Treasury issued Federal Reserve Notes which bore the promise: "This note is legal tender for all debts, public and private and is redeemable in lawful money at the United States Treasury or at any Federal Reserve Bank."

12. In more recent years the U. S. Treasury, apparently without the authority of any new legislation or Executive Order has been substituting new Federal Reserve Notes from which the promise to redeem in lawful money has been removed. Although these pieces of paper are boldly imprinted as so many dollars, they clearly are neither statutory dollars nor by virtue of redeemability, the equivalent of statutory dollars. They are mere

pieces of paper purported to be dollars but quite evidently not statutory dollars. They are pseudo dollars or paper dollars for which I shall use the symbol "P$".

13. Until July 31, 1971, when the redemption of P$ and other claims on S$'s was terminated by Presidential Executive Order, the provisions of the Gold Standard Act requiring "—all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard—" were carried out. It is true that citizens of the United States were not permitted to acquire S$'s for their claims, but they could exchange their claims for foreign currencies and the foreign central banks could obtain S$ for the claims. Thus, by a round-about process, the provisions of the "Gold Standard Act" were continued in effect.

14. Since July 31, 1971, the provision of the "Gold Standard Act" requiring maintenance of a parity of value among all forms of money in the United States has been disregarded. The inevitable consequence has been that the United States now has two obviously different types of money.

    a. One type is the statutory dollar (S$) which presumably meets the legal requirement for reporting on a tax return.

    b. The other type is the pseudo dollar (P$) which has no standing in law. It is not authorized by any statute as yet enacted nor is it provided for by any Presidential Order. It exists simply

because the Government has chosen not to be governed by the duly enacted law of the land.

15. That the statutory dollar represents a certain quantity of gold is supported by the United States Constitution. Article I., Section 10 states: "No State shall—make anything but gold and silver coin a tender in payment of debts:—"

    Since Federal Reserve Notes are only paper and are not redeemable in silver or gold, they do not enjoy the support of the Constitution as money.

16. Article I, Section 8 of the U.S. Constitution states: "The Congress shall have the power to—coin money, regulate the value thereof,—." "Coined money" and "notes" are vastly different. A note is a certificate of debt, or a promise to pay. A Federal Reserve Note is a note. It is not money.

17. Federal Reserve Notes are receipts for "money borrowed by the Government." (101 U.S. 421, 28 L.Ed. 204; *US. v. Ballard*, 14 Wall (U.S.) 457, 20 L.Ed. 845).

18. Issuance of Federal Reserve Notes is not an attempt by the Government to coin money. It is a pledge of the national credit and constitutes a pledge of the government to pay "dollars". It is not an attempt to make "dollars." (*U.S. v. Ballard*).

19. The term "money" may not embrace "evidence of indebtedness,—Obligations." (*Lane v. Railey*, 280 Ky. 319, 133 (S.W.2d 74).

20. Bank notes are not to be classed as "money". (*Hamilton v. State*, 60 Ind. 193, 28 Am. Rep. 653).

21. Federal Reserve Notes (P$'s) are created by a private corporation (Federal Reserve Bank) which has never even been properly audited by the Congress. Since Federal Reserve Notes are not redeemable in Constitutional money, they can not have the legal preeminence of statutory dollars (S$'s).

22. Page 30 of IRS Publication 17 states: "If you receive a note as compensation for services, the fair market value—of the note—is taxable in the year you receive it.—"

23. Actual value of these non-money, paper reserve notes (P$'s) is the fair market value when exchanged for lawful and Constitutional money such as silver coins or statutory dollars (S$'s).

24. Page 109 of IRS Publication 17 defines "fair market value—as the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts."

25. The fairest and most free market in the world for the exchange of P$'s and S$'s (gold bullion) is in London, England. A table of daily gold prices in London is submitted as Attachment B.

26. Thus we have computed the fair market values of the notes (P$, Federal Reserve Notes) which are involved in the preparation of our income tax

returns. We are reporting the fair market value of these notes in statutory dollars (S$'s).

27. A typical calculation of the fair market value of an income item is as follows:

    P$ 687.50 received as wages on 1-31-'73.

    Price of gold in London on 1-31-'73 was P$ 66.00 per troy ounce. See Attachment "B".

    On 1-31-'73, one statutory dollar consisted of 1/38th troy ounce of gold. The price of gold had been set at S$ 38.00/oz.

$$\text{P\$ } 687.50 \times \frac{\text{S\$ } 38.00/\text{Oz.}}{\text{P\$ } 66.00/\text{Oz.}} = \text{S\$ } 395.83$$

    The amount of S$ 395.83 is reported as the fair market value of our income received on 1-31-'73.

28. Similar calculations were made for each income item and each other item that was involved in our returns.

ATTACHMENT "B" TO AMENDED 1973 RETURN OF DONALD H. AND PATRICIA MARIE MATHES

Daily (London) Gold Price Final Fixing 1973 — U.S. Pseudo Dollars per T Ounce of Pure Gold.

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
1		$66.60	$85.70		$90.70	$117.75		$117.50		$ 96.75	$ 97.00		1
2	$65.10	66.90	86.30	$89.25	90.60		$121.00	116.10		97.75	98.50		2
3	65.30			90.00	90.30		122.00	116.00	$104.50	99.15		$100.25	3
4	64.90			90.25	90.30	123.50	123.50		105.10	99.00		105.50	4
5	65.25	67.60	84.00	90.90		126.00	123.00		106.10	98.50	98.00	105.00	5
6		68.80	83.00	90.75		121.50	127.00	115.50	105.50		98.00	105.75	6
7		68.65	82.50		90.30	118.50		114.90	105.25		97.40	107.25	7
8	65.10	69.00	83.75		91.40	117.25		113.75		100.75	98.00		8
9	65.15	68.10	82.875	91.00	92.75		126.00	110.00		99.75	98.50		9
10	65.00			91.00	94.80		123.00	106.75	104.75	103.50		105.50	10
11	65.025			91.25	96.70	115.50	119.00		102.75	103.75		104.15	11
12	65.15	68.35	82.50	90.90		117.25	121.00		102.25	101.925	97.00	104.00	12
13		68.90	80.00	90.00		115.50	121.00	102.00	100.25		96.90	103.65	13
14		72.30	80.00		102.25	117.75		98.50	100.30		90.00	105.00	14
15	65.10	73.65	82.75		110.00	120.00		94.00		101.25	91.25		15
16	65.10	73.30	82.75	89.30	106.50		119.90	103.00		101.85	90.25		16
17	64.65			90.25	104.25		121.00	104.00	104.00	103.50		106.75	17
18	63.90			91.00	105.50	122.50	119.50		103.00	101.90		109.00	18
19	64.50	74.90	82.25	90.75		120.25	114.25		101.40	101.00	90.00	108.40	19
20		76.50	82.25			120.00	117.50	109.50	103.25		90.50	108.00	20
21		79.30	81.60		112.00	120.50		105.70	103.50		90.25	106.75	21
22	65.20	86.50	81.70		110.50	120.00		103.00		99.25	90.10		22
23	65.20	85.00	84.50		109.75		118.75	100.25		100.75	90.00		23
24	64.95			90.80	110.00		119.90	101.00	102.00	99.75			24
25	65.60			90.15	106.50	118.50	118.50		101.75	100.10			25
26	65.50	80.70	90.00	90.55		123.25	119.50		102.50	98.25	90.25		26
27		83.70	90.00	90.60		122.25	117.00		101.25		92.00	111.75	27
28		85.00	88.50			121.50		104.00	100.00		101.50	112.00	28
29	65.30		89.25		110.00	123.25		107.30		98.25	101.75		29
30	66.075		90.00	90.725	113.25		115.50	105.50		97.25	101.00		30
31	66.00				114.75		115.60	103.50		98.00		112.75	31

A Troy or Standard Dollar was one twenty-eighth ounce of gold until 0 February 73, when it became 1÷ 42.22 ounce

40

SSNo. 465-40-2178

1

ATTACHMENT "B" TO 1974 RETURN OF D.H. AND P.M. MATHES

DAILY GOLD PRICE FINAL FIXING FOR 1974 IN LONDON, ENGLAND

U.S. PSEUDO DOLLARS PER TROY OUNCE OF GOLD

	JAN	FEB	MAR	APR	MAY	JUN	
1		130.50	167.50	174.10	169.50		1
2	116.50			177.00	169.65		2
3	121.25			179.50	169.00	155.50	3
4	118.50	133.50	166.00	176.25		154.50	4
5		140.00	159.00	173.25		161.75	5
6		138.00	160.00		169.00	159.00	6
7	121.50	139.00	166.00		166.00	155.50	7
8	126.50	143.00	165.00	167.00	157.75		8
9	124.50			170.00	166.25		9
10	120.00			173.25	167.70	157.40	10
11	122.00	145.00	165.50	173.50		157.25	11
12		146.50	163.00			156.50	12
13		144.00	164.50		166.50	157.00	13
14	124.75	146.00	164.50		166.25	160.50	14
15	125.50	148.90	163.85		164.40		15
16	126.25			172.25	164.00		16
17	128.35			169.90	165.50	157.50	17
18	130.00	150.00	164.00	170.00		155.50	18
19		149.50	169.00	172.00		153.60	19
20		150.00	176.00		162.90	151.75	20
21	138.25	156.75	175.00		161.00	153.75	21
22	137.40	163.00	177.50	174.75	163.00		22
23	134.50			174.70	159.50		23
24	141.00			170.75	161.75	150.00	24
25	140.90	169.50	176.75	169.00		149.75	25
26		175.00	172.25	169.00		146.50	26
27		174.00	174.00			144.50	27
28	139.50	162.50	174.50		154.00	144.25	28
29	137.50		173.00	169.25	155.50		29
30	135.55			169.25	162.00		30
31	132.50				156.75		31

2

ATTACHMENT "B" 1974 RETURN

DAILY GOLD PRICE 1974

U.S. PSEUDO DOLLARS PER TROY OUNCE OF GOLD

	JUL	AUG	SEP	OCT	NOV	DEC	
1	143.00	159.40		155.75	167.45		1
2	137.00	156.50	158.50	154.00		185.75	2
3	136.50		157.75	155.65		185.75	3
4	129.00		156.90	159.00	173.75	183.00	4
5	134.00	153.60	157.50		178.00	174.25	5
6		155.00	157.00		178.00	178.50	6
7		154.50		157.50	177.25		7
8	141.00	152.00		155.10	183.00		8
9	145.50	154.25	155.50	155.70		180.90	9
10	138.75		154.50	158.25		178.00	10
11	137.00		152.90	157.00	182.00	174.75	11
12	137.00	152.25	154.40		180.00	175.75	12
13		151.50	153.00		185.25	178.40	13
14		158.25		154.85	188.25		14
15	138.75	153.00		155.00	187.50		15
16	141.00	155.50	152.75	155.00		179.75	16
17	140.75		147.75	155.00		183.00	17
18	144.00		148.00	155.25	190.50	187.00	18
19	145.50	155.25	149.50		187.75	186.25	19
20		156.00	146.00		180.50	187.50	20
21		155.50		157.00	182.50		21
22	143.00	154.50		158.00	182.00		22
23	144.00	154.00	148.00	157.80		193.00	23
24	144.25		147.50	162.00		192.25	24
25	149.00		147.25	163.25	183.75		25
26	149.00		145.40		184.25		26
27		153.50	145.75		181.50	195.00	27
28		154.35		167.50	181.50		28
29	157.50	154.55		168.25	184.00		29
30	157.00	156.00	151.25	168.00		195.20	30
31	156.00			167.00		186.30	31

APPENDIX "L"

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

DONALD H. MATHES AND
PATRICIA MARIE MATHES,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 4674-76.

DECISION

Pursuant to the determination of the Court as set forth in its Memorandum Findings of Fact and Opinion filed July 14, 1977, it is

ORDERED and DECIDED: That there is a deficiency in income tax due from petitioners for the taxable year 1973 in the amount of $1,318.95; and

That there is a statutory deficiency in petitioners' income tax for the taxable year 1974 in the amount of $2,529.61, and that there is an overpayment due to petitioners for the taxable year 1974 in the amount of $856.31, for which amount a claim for refund could have been filed within the period provided under Section 6511(b), Int. Rev. Code of 1954, on the date of the mailing of the notice of deficiency.

Irene F. Scott

Judge.

Entered: JUL 15 1977

U.S. GOVERNMENT PRINTING OFFICE 16—63006-8

Form 58
Rev. Apr. 1970

Supreme Court, U. S.
FILED
JAN 10 1979
MICHAEL RODAK, JR., CLERK

No. 78-858

In the Supreme Court of the United States

OCTOBER TERM, 1978

DONALD H. MATHES AND PATRICIA MARIE MATHES,
PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-858

DONALD H. MATHES AND PATRICIA MARIE MATHES, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioners seek review of the decision below holding that they are required to report at its full face value income received in the form of federal reserve notes, and that they were not entitled to a jury trial in the Tax Court.

The pertinent facts may be summarized as follows: During 1973, petitioners received gross income of $21,795, consisting of wages and dividends, which they reported on their joint federal income tax return for that year (R. 137).[1] On May 19, 1975, petitioners filed a second income tax return for 1973, which they denominated "Amended 5-19-75 for Statutory Dollars," and on which the gross income reported amounted to $8,873.20 (R. 30). According to petitioners, they made this reduction in the amount

[1] "R." refers to the record appendix filed in the court of appeals.

of their income (Pet. App. 33-42) to reflect the fact that federal reserve notes are not "statutory dollars" because a dollar is statutorily defined as a specific weight either of gold or of silver. Petitioners applied the same reduction in reporting income on their 1974 return (R. 45-58). On audit, the Commissioner of Internal Revenue determined that petitioners were not entitled to reduce their income in this manner and were therefore taxable on the full face amount of their incomes for 1973 and 1974 (R. 20-25).

On May 9, 1977, petitioners filed a motion for a jury trial in the Tax Court, which was denied (R. 72). The Tax Court upheld the Commissioner's determination (R. 292-300), and the court of appeals affirmed (Pet. App. 28-29).

1. Petitioners assert (Pet. 3-15) that federal reserve notes are not dollars. But the power and intention of Congress to establish a national currency in the form of federal reserve notes, and to tax income received in that form, are not open to serious dispute. See, *e.g.*, *Juilliard* v. *Greenman*, 110 U.S. 421, 448 (1884); *Milam* v. *United States*, 524 F. 2d 629, 630 (9th Cir. 1974); *Gajewski* v. *Commissioner*, 67 T.C. 181, 193-195 (1976). Every appellate decision that has considered the contention that federal reserve notes are not "dollars" for purposes of the tax laws has rejected the claim as frivolous. See *e.g.*, *United States* v. *Schmitz*, 542 F. 2d 782, 783-784 (9th Cir. 1976), cert. denied, 429 U.S. 1105 (1977); *United States* v. *Kelley*, 539 F. 2d 1199, 1203 (9th Cir.), cert. denied, 429 U.S. 963 (1976); *United States* v. *Wangrud*, 533 F. 2d 495, 496 (9th Cir.), cert. denied, 429 U.S. 818 (1976); *United States* v. *Gardiner*, 531 F. 2d 953, 955 (9th Cir.), cert. denied, 429 U.S. 853 (1976); *United States* v. *Daly*, 481 F. 2d 28, 30 (8th Cir.), cert. denied, 414 U.S. 1064 (1973).

2. Petitioners further contend (Pet. 16-24) that they were entitled to a trial by jury in the Tax Court by virtue of the Seventh Amendment to the United States Constitution. There is, however, neither a constitutional

nor a statutory right to a jury trial in the Tax Court. *Phillips* v. *Commissioner*, 283 U.S. 589, 599 n.9 (1931); *Wickwire* v. *Reinecke*, 275 U.S. 101, 105-106 (1927); *Dorl* v. *Commissioner*, 507 F. 2d 406, 407 (2d Cir. 1974). See also *Atlas Roofing Co.* v. *Occupational Safety Commission*, 430 U.S. 442 (1977).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

JANUARY 1979

DOJ-1979-01

Supreme Court, U. S.
FILED
FEB 9 1979
MICHAEL RODAK, JR., CLERK

IN THE

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OCTOBER TERM, 1978

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DONALD H. MATHES and
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v.

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Respondent.

MEMORANDUM OF PETITIONERS

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IN THE

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OCTOBER TERM, 1978

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DONALD H. MATHES and
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COMMISSIONER OF INTERNAL REVENUE,
Respondent.

MEMORANDUM OF PETITIONERS

Petitioners are submitting this Memorandum in response to Respondent's six sentence response to the Petition for Writ of Certiorari.

Petitioners have presented to the Court in this matter the complete Constitutional background on the questions at issue. Never before in the Courts of the United States have the issues at bar been so thoroughly elucidated upon.

For that reason alone, it would appear that Respondent should, at least, reply to the uncontrovertable data presented by Petitioners, instead of citing a few previous cases wherein the entire genre was never fully considerd.

An example of the inaccuracy of Respondent's Memorandum is its assertion regarding reduction of income, when, in fact, Petitioners income was reported in its full amount in statutory United States Dollars.

Petitioners call upon the Honorable Court not to be deceived by Respondent's sketchy Memorandum.

Upon the information thus submitted, Petitioners' respectfully request that their Petition for Writ of Certiorari be granted.

Dated: February 6, 1979

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